

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOHN J. KELLY,

Plaintiff,

vs.

UNITED STATES STEEL CORPORATION,

Defendant.

)
)
) **2:11-cv-00193**
)
)
)
)
)

MEMORANDUM ORDER

Pending before the court is DEFENDANT’S MOTION IN LIMINE TO STRIKE PORTIONS OF MARIA LAMB’S VIDEO DEPOSITION RELATING TO QUESTIONS POSED BY PLAINTIFF’S COUNSEL AND LAMB’S RESPONSES THERETO (Document No. 81). Plaintiff John J. Kelly (“Kelly”) filed a brief in opposition and it is ripe for disposition.

Discussion

The factual and procedural background will not be recounted again. Maria Lamb is a U.S. Steel human resources employee who participated in the events leading to the termination of Kelly’s employment. The parties took her video deposition on October 31, 2012 for use at trial, because Ms. Lamb is unable to be present in the courtroom. The Court will resolve the objections seriatim:

1. US Steel first objects to the testimony elicited at pages 60-108 of the deposition, which relates to Kelly’s performance evaluations from 2002-2008. US Steel argues that Lamb was not employed by US Steel at the time, did not author the exhibits or rely on them in making her decisions, and has no personal knowledge of the contents of the exhibits. Thus, US Steel contends that her deposition testimony should be stricken pursuant to Fed. R. Evid. 602. Kelly

contends that Lamb reviewed these documents and thus did have personal knowledge of their contents at the relevant time.

The Court agrees with US Steel. The portions of Lamb's testimony on which Kelly relies make it clear that Lamb did not read the actual performance evaluations. Rather, Lamb reviewed **summaries** of those performance evaluations. *See, e.g.* Lamb Deposition at 112-113 (counsel for Kelly challenging Lamb to explain why she only looked at the summaries without going to the personnel file to read the actual performance evaluations). Accordingly, Lamb lacks personal knowledge to testify regarding these exhibits pursuant to Fed. R. Evid. 602 and this motion in limine is **GRANTED**. Thus, the Court need not resolve the parties' contentions regarding selected portions of these pages.

2. The Court **DENIES** the objection of US Steel to Page 111, Line 25 through Page 112, Line 4. It is not unduly repetitive or cumulative.

3. The Court **DENIES** the objection of US Steel to Page 112, Lines 5-18, which is the portion of the transcript discussed in ¶ 1 above (clarifying that Lamb reviewed summaries, but not the actual performance evaluations). This testimony is relevant and the jury will be instructed that the questions of counsel are not evidence.

4. The Court **DENIES** the objection of US Steel to Page 113, Line 14 through Page 114, Line 5. This testimony is relevant and the jury will be instructed that the questions of counsel are not evidence.

5. The Court **DENIES** the objection of US Steel to Page 118, Lines 12-25. The jury will be instructed that the questions of counsel are not evidence.

6. The Court **GRANTS** the objection of US Steel to Page 125, Lines 2-9, as unopposed.

7. The Court **GRANTS** the objection of US Steel to Page 126, Line 13 through Page 127, line 14, pursuant to Fed. R. Evid. 602 for lack of foundation of Lamb's personal knowledge regarding Exhibit 38.

8. The Court **GRANTS** the objection of US Steel to Page 128, Lines 8-15, regarding an early retirement program. Such testimony is irrelevant to the issues in this case and has the potential to confuse and mislead the jury.

9. The Court **GRANTS** the objection of US Steel to Page 130, Line 7 through Page 133, Line 15, regarding the US Steel pension plan. The Court has precluded Kelly from seeking recovery of lost pension benefits, as explained in a prior Memorandum Opinion.

SO ORDERED this 13th day of November, 2012.

BY THE COURT:

/s/ Terrence F. McVerry
United States District Court Judge

cc: **Bruce C. Fox, Esquire**
Email: bruce.fox@obermayer.com
Andrew Horowitz, Esquire
Email: Andrew.horowitz@obermayer.com
Anthony F. Jeselnik, Esquire
Email: afjeselnik@uss.com
Rodney M. Torbic, Esquire
Email: rmtorbic@uss.com